

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 401

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO THE IDAHO SPECIAL INDEMNITY FUND; AMENDING SECTION 72-223, IDAHO CODE, TO CLARIFY CERTAIN SUBROGATION INTERESTS AND TO REMOVE OBSOLETE LANGUAGE; AMENDING SECTION 72-324, IDAHO CODE, TO PROVIDE LANGUAGE RELATING TO ADJUSTING CERTAIN CLAIMS, ENTERING INTO CERTAIN AGREEMENTS AND SETTLING CERTAIN DISPUTED CLAIMS; AMENDING SECTION 72-327, IDAHO CODE, TO REVISE THE METHOD OF CALCULATION OF AN ANNUAL ASSESSMENT, TO REVISE CERTAIN APPORTIONMENTS, TO REVISE PROVISIONS RELATING TO REPORTING, TO REMOVE A PROVISION RELATING TO CERTAIN INDEMNITY BENEFITS PAID AND TO REMOVE A PENALTY; AMENDING SECTION 72-328, IDAHO CODE, TO REVISE A PROVISION RELATING TO CERTAIN WILLFUL MISREPRESENTATIONS; AMENDING SECTION 72-332, IDAHO CODE, TO REVISE LANGUAGE RELATING TO CERTAIN RESPONSIBLE PARTIES FOR PAYMENT OF COMPENSATION BENEFITS BEFORE A CERTAIN DATE; AND AMENDING SECTION 72-334, IDAHO CODE, TO PROVIDE A DATE TO PRECLUDE CLAIMS AGAINST THE INDUSTRIAL SPECIAL INDEMNITY FUND.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 72-223, Idaho Code, be, and the same is hereby amended to read as follows:

72-223. THIRD PARTY LIABILITY. (1) The right to compensation under this law shall not be affected by the fact that the injury, occupational disease or death is caused under circumstances creating in some person other than the employer a legal liability to pay damages therefor, such person so liable being referred to as the third party. Such third party shall not include those employers described in section 72-216, Idaho Code, having under them contractors or subcontractors who have in fact complied with the provisions of section 72-301, Idaho Code; nor include the owner or lessee of premises, or other person who is virtually the proprietor or operator of the business there carried on, but who, by reason of there being an independent contractor or for any other reason, is not the direct employer of the workmen there employed.

(2) Action may be instituted against such third party by the employee, or in event compensation has been claimed and awarded, by the employee and employer jointly, in the employee's name, or, if the employee refuses to participate in such action, by the employer in the employee's name.

(3) If compensation has been claimed and awarded, the employer having paid such compensation or having become liable therefor, shall be subrogated to the rights of the employee, to recover against such third party to the extent of the employer's compensation liability. The subrogated interest of the employer shall not include compensation paid or awarded for total and permanent disability which is in part apportionable to preexisting permanent impairments of the employee, except to the extent that

1 compensation relating to the preexisting permanent impairments was paid as
 2 part of an award or order of the industrial commission.

3 (4) Unless otherwise agreed, upon any recovery by the employee against
 4 the third party, the employer shall pay or have deducted from its subrogated
 5 portion thereof, a proportionate share of the costs and attorney's fees
 6 incurred by the employee in obtaining such recovery unless one (1) or more of
 7 the following circumstances exist:

8 (a) If prior to the date of a written retention agreement between the
 9 employee and an attorney, the employer has reached an agreement with
 10 the third party, in writing, agreeing to pay in full the employer's
 11 subrogated interest;

12 (b) If the employee alleges or asserts a position in the third
 13 party claim adverse to the employer, then the commission shall have
 14 jurisdiction to determine a reasonable fee, if any, for services
 15 rendered to the employer;

16 (c) If there is a joint effort between the employee and employer to
 17 pursue a recovery from the third party, then the commission shall have
 18 jurisdiction to determine a reasonable fee, if any, and apportion the
 19 costs and attorney's fees between the employee and employer.

20 (5) If the amount recovered from the third party exceeds the amount
 21 of the subrogated portion payable to the employer for past compensation
 22 benefits paid, then to the extent the employer has a future subrogated
 23 interest in that portion of the third party recovery paid to the employee,
 24 the employer shall receive a credit against its future liability for
 25 compensation benefits. Such credit shall apply as future compensation
 26 benefits become payable, and the employer shall reimburse the employee for
 27 the proportionate share of attorney's fees and costs paid by the employee
 28 in obtaining that portion of the third party recovery corresponding to the
 29 credit claimed. The employer shall not be required to pay such attorney's
 30 fees and costs related to the future credit prior to the time the credit is
 31 claimed. However, the employer and employee may agree to different terms if
 32 approved by the industrial commission.

33 (6) If death results from the injury or occupational disease and if
 34 the employee leaves no dependents entitled to benefits under this law, the
 35 surety shall have a right of action against the third party for recovery of
 36 income benefits, reasonable expenses of medical and related services and
 37 burial expense actually paid by the surety and for recovery of amounts paid
 38 into the industrial special indemnity account pursuant to section 72-420,
 39 Idaho Code, and such right of action shall be in addition to any cause of
 40 action of the heirs or personal representatives of the deceased.

41 ~~(7) All rights and restrictions herein granted to the employer have~~
 42 ~~previously been intended to be, and are hereby expressly granted to the~~
 43 ~~industrial special indemnity account.~~

44 SECTION 2. That Section 72-324, Idaho Code, be, and the same is hereby
 45 amended to read as follows:

46 72-324. MANAGEMENT OF INDUSTRIAL SPECIAL INDEMNITY FUND. There is
 47 hereby created in the department of administration the office of manager of
 48 the industrial special indemnity fund, elsewhere in this chapter referred to
 49 as manager, whose duties shall be to administer the fund without liability

on the part of the state or the manager beyond the amount of such fund. Among the powers of the manager shall be the power to evaluate, investigate, adjust claims made against the fund and make agreements, subject to the approval of the industrial commission, for compensation for injuries and occupational diseases in accordance with the provisions of this act, including the power to order payment from the fund for such medical, hospital and nursing care charges as injured persons or those suffering from occupational diseases may be entitled to from the fund. In the process of adjusting claims made against the fund and entering into agreements for compensation, the manager shall not be required to stipulate or agree to any or all of the elements of industrial special indemnity fund liability. The manager shall have authority, subject to approval of the industrial commission, to settle disputed claims without being required to stipulate to any element of industrial special indemnity fund liability.

The compensation of such manager shall be as provided in section 59-508, Idaho Code.

The manager shall be given notice of all applications, hearings and proceedings involving rights of the fund, and shall represent the fund in all proceedings brought to enforce a claim against it. The manager shall have the authority to employ such medical or other experts and to defray the expense thereof and of such witnesses as are reasonably necessary to administer, evaluate or defend the fund. The manager may also employ such employees as are necessary to assist in the administration of the fund. The manager may also employ legal counsel, or obtain legal counsel pursuant to section 72-330, Idaho Code, to represent and conduct on behalf of the fund all suits, actions and proceedings whatsoever involving the fund.

The manager may, in his official name, sue and be sued in all the courts of the state and before the industrial commission in all actions or proceedings arising out of anything done or offered in connection with the industrial special indemnity fund or business related thereto.

The industrial commission shall compute and collect the assessment provided by section 72-327, Idaho Code, and shall make quarterly reports to the fund of the same. The manager of the fund shall, each quarter of each year, prepare and file with the industrial commission and the state treasurer a report of all expenses of administration, legal expenses and payments from the fund, which reports will be kept on file and open to inspection by any interested person.

The director of the department of administration shall appoint the manager from a list of at least three (3) names provided by the industrial commission. The manager shall serve at the pleasure of the director of the department of administration.

SECTION 3. That Section 72-327, Idaho Code, be, and the same is hereby amended to read as follows:

72-327. ASSESSMENT -- METHOD OF CALCULATION AND PRORATION -- TIME FOR PAYMENT. (1) The state insurance fund, every authorized self-insurer and every surety authorized under the Idaho insurance code or by the director of the department of insurance to transact worker's compensation insurance in Idaho, in addition to all other payments required by statute, shall, within thirty (30) days subsequent to September 1 and April 1 of each year, pay to

the industrial commission for deposit in the industrial special indemnity fund an assessment as follows:

(a) The total annual assessment payable in the manner set forth in this section shall be equal in amount to ~~two (2) times the amount of all expenses of the industrial special indemnity fund incurred during the immediately preceding fiscal year less the existing cash balance of the industrial special indemnity fund as of the thirtieth day of June of the immediately preceding fiscal year;~~ the sum of all of the following:

(i) The total of all annuity payments scheduled to be made in the next fiscal year;

(ii) The administrative expenses projected for the fund over the next fiscal year; and

(iii) An amount equal to five percent (5%) of the total of all annuity payments scheduled to be made in the next fiscal year.

Subtract from this sum the existing cash balance of the fund as of the end of the thirtieth day of June of the immediately preceding fiscal year.

(b) The total annual assessment shall be apportioned on a pro rata percentage basis among and between the state insurance fund, every authorized self-insurer and every surety authorized under the Idaho insurance code or by the director of the department of insurance to transact worker's compensation insurance in Idaho based upon the proportionate share of the ~~total gross amount of indemnity benefits paid~~ net premiums written by the state insurance fund or each surety, or for each self-insurer, the net premium as calculated pursuant to section 72-523, Idaho Code, on Idaho worker's compensation claims policies during the applicable reporting period;

(c) The amount of each responsible entity's or person's assessment which is due and payable within thirty (30) days subsequent to September 1 and April 1 of any year shall be calculated by dividing one-half (1/2) of the total annual assessment amount by the responsible party's proportionate share of the ~~total gross amount of indemnity benefits paid~~ net premiums written during the preceding period of time from January 1 through December 31. In no case shall the amount of any such assessment be less than two hundred dollars (\$200).

~~(2) In arriving at the total gross amount of indemnity benefits paid, the amount of indemnity benefits shall include those payments provided for or made under the provisions of the worker's compensation law with respect to "income benefits" as defined in section 72-102, Idaho Code.~~

~~(3)~~ For the purposes of this section, the responsible entities or persons shall report to the industrial commission their ~~total gross indemnity benefits paid during the twelve (12) month period from January 1 through December 31 no later than March 3 of the next succeeding year~~ net premiums written as required in section 72-524, Idaho Code.

~~(4) A penalty for the late filing of any report required by this section will be assessed in accordance with the rules of the industrial commission.~~

~~(5)~~ The industrial special indemnity fund shall certify to the industrial commission annually the amount of the assessment payable under this section and the industrial commission shall prepare and submit to each responsible entity or person notice of its pro rata amount payable hereunder

1 on or before April 1, 1998, and thereafter on or before September 1 and April
2 1 of each succeeding year.

3 (64) For the purposes of this section, the cash balance of the
4 industrial special indemnity fund in any fiscal year shall mean all money
5 deposited or invested by the state treasurer to the credit of the industrial
6 special indemnity fund pursuant to sections 72-325 and 72-326, Idaho Code,
7 and all interest earned thereon.

8 (75) For purposes of this section, the term "fiscal year" shall mean
9 that period of time commencing upon July 1 in any year and ending upon June 30
10 of the next succeeding year.

11 SECTION 4. That Section 72-328, Idaho Code, be, and the same is hereby
12 amended to read as follows:

13 72-328. COLLECTION OF DELINQUENT ASSESSMENTS -- DUTY OF ATTORNEY
14 GENERAL -- PENALTIES. (1) If any responsible entity or person required to
15 make payment of an assessment as provided in this act shall fail to make full
16 payment on or before ten (10) days following the time period specified in
17 section 72-327, Idaho Code, for payment of the assessment, it shall be the
18 duty of the attorney general to bring a civil action in the name of the state
19 in the proper court to collect the amount of the assessment due. Any amount
20 of assessment collected by the attorney general shall be deposited in the
21 industrial special indemnity fund.

22 (2) Any responsible entity or person who is in default for ten (10) or
23 more days in the payment of the assessment as set forth in this act shall
24 be liable for a penalty for every ten (10) day period or any part thereof
25 during which such failure continues. The penalty shall be in the amount
26 of ten percent (10%) of the amount originally due. It shall be the duty of
27 the attorney general to bring a civil action in the name of the state in the
28 proper court to collect the amount of the penalty herein provided in addition
29 to any unpaid assessment. Any amount of penalty and assessment collected by
30 the attorney general shall be deposited in the industrial special indemnity
31 fund.

32 (3) Any responsible surety or person who shall willfully misrepresent
33 the amount of ~~total gross indemnity benefits paid~~ net premiums written under
34 the provisions of this act shall be liable to the state for a penalty in
35 an amount ten (10) times the difference between the payments made and the
36 amounts that should have been paid had such misrepresentation not been made.
37 It shall be the duty of the attorney general to bring a civil action in the
38 name of the state in the proper court to collect the amount of the penalty
39 herein provided in addition to any unpaid assessment. Any amount of penalty
40 and assessment collected by the attorney general shall be deposited in the
41 industrial special indemnity fund.

42 SECTION 5. That Section 72-332, Idaho Code, be, and the same is hereby
43 amended to read as follows:

44 72-332. PAYMENT FOR SECOND INJURIES FROM INDUSTRIAL SPECIAL INDEMNITY
45 ~~ACCOUNT~~ FUND. (1) If an employee who has a permanent physical impairment
46 from any cause or origin, incurs a subsequent disability by an injury or
47 occupational disease arising out of and in the course of his employment

1 before July 1, 2010, and by reason of the combined effects of both
 2 the ~~pre-existing~~ preexisting impairment and the subsequent injury or
 3 occupational disease or by reason of the aggravation and acceleration
 4 of the ~~pre-existing~~ preexisting impairment suffers total and permanent
 5 disability, the employer and surety shall be liable for payment of
 6 compensation benefits only for the disability caused by the injury or
 7 occupational disease, including scheduled and unscheduled permanent
 8 disabilities, and the injured employee shall be compensated for the
 9 remainder of his income benefits out of the industrial special indemnity
 10 account fund.

11 (2) "Permanent physical impairment" is as defined in section 72-422,
 12 Idaho Code, provided, however, as used in this section such impairment must
 13 be a permanent condition, whether congenital or due to injury or disease,
 14 of such seriousness as to constitute a hindrance or obstacle to obtaining
 15 employment or to obtaining ~~re-employment~~ reemployment if the claimant
 16 should become employed. This shall be interpreted subjectively as to the
 17 particular employee involved, however, the mere fact that a claimant is
 18 employed at the time of the subsequent injury shall not create a presumption
 19 that the ~~pre-existing~~ preexisting permanent physical impairment was not of
 20 such seriousness as to constitute such hindrance or obstacle to obtaining
 21 employment.

22 (3) For injury occurring or occupational diseases manifesting on
 23 or after July 1, 2010, the employer and the surety for the employer in
 24 whose employ the employee suffered an accident or an occupational disease
 25 resulting in total and permanent disability shall be responsible for the
 26 payment of all benefits to which the employee is entitled by reason of
 27 total and permanent disability, without reduction or apportionment of any
 28 preexisting permanent impairment or nonmedical factors.

29 SECTION 6. That Section 72-334, Idaho Code, be, and the same is hereby
 30 amended to read as follows:

31 72-334. FILING NOTICE OF CLAIM WITH THE INDUSTRIAL SPECIAL INDEMNITY
 32 FUND -- TIME FOR FILING -- RECORDS TO BE INCLUDED WITH NOTICE OF CLAIM --
 33 JURISDICTIONAL EFFECT. (1) Any claimant, employer or surety making a claim
 34 for benefits with the industrial special indemnity fund shall file a notice
 35 of claim with the manager not less than sixty (60) days prior to the date of
 36 filing of a complaint against the industrial special indemnity fund with
 37 the industrial commission seeking benefits from the industrial special
 38 indemnity fund. Such notice of claim shall include, but not be limited
 39 to, a detailed statement describing the disability claim and supporting
 40 documentation including relevant medical and vocational rehabilitation
 41 records. Failure to timely file a notice of claim with the manager shall
 42 require the involuntary dismissal of any complaint against the industrial
 43 special indemnity fund regarding the claim for benefits which the party
 44 seeking to join the industrial special indemnity fund may cause to be filed
 45 with the industrial commission. The manager shall evaluate the notice of
 46 claim and shall approve or deny the claim or make an offer of settlement
 47 within the sixty (60) day period. If, in the discretion of the manager, the
 48 notice of claim is determined to be incomplete, the manager may, upon written
 49 notice to the party seeking to join the industrial special indemnity fund,

1 extend the time period for evaluation of the claim for a maximum of thirty
2 (30) days in order to request the necessary documents and records. The
3 manager shall approve or deny the claim or make an offer of settlement within
4 the extended period.

5 (2) Notice of a claim under subsection (1) of this section against
6 the industrial special indemnity fund for income benefits due to total and
7 permanent disability arising under the provisions of section 72-332, Idaho
8 Code, before July 1, 2010, shall be filed with the manager before July 1,
9 2012.

10 (3) Where notice is not filed, pursuant to subsection (2) of this
11 section, before July 1, 2012, the employer and the surety for the employer
12 shall be responsible for claims for total and permanent disability arising
13 before July 1, 2010, in the same manner as they would be responsible for
14 claims for total and permanent disability arising on or after July 1, 2010,
15 pursuant to section 72-332(3), Idaho Code.